



Attorney Docket: 70231

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : FUCHS et al.
Serial No : 09/895,917
Confirm. No. : 9518
Filed : June 29, 2001
For : PIVOTING MIRROR...
Art Unit : 2872
Examiner : SHAFFER, Ricky D
Dated : April 14, 2004

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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Petition
W/1
Abandonment
9/10/04

PETITION TO REQUEST TO WITHDRAW ABANDONMENT

Sir:

Applicant has received a Notice of Abandonment dated April 6, 2004, advising that the above-identified application is abandoned in view of failure to reply to the Office letter mailed on September 25, 2003.

Applicant received a Restriction Requirement from the U.S. Patent Office dated September 25, 2003. This Restriction Requirement did not set a shortened statutory period for reply. Therefore according to U.S. patent regulations the maximum statutory period applies and expires six months from the mailing date of September 25, 2003.

Applicant responded to the Restriction Requirement dated September 25, 2003 by filling an Election to Invention I on January 26, 2004. This election was submitted by facsimile to facsimile number 1-703-308-7382. A Certificate of Facsimile was sent therewith. Enclosed is a photocopy of the response and a

Certificate of Facsimile Transmission signed by Jennifer Spinning certifying that the facsimile was sent on January 26, 2004.

Also enclosed is a photocopy of the Transmission Verification Report printed by Applicant's facsimile machine indicating that the response was submitted as indicated.

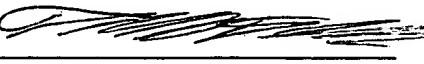
CONCLUSION

Accordingly it is respectfully requested that the abandonment be withdrawn as a timely response was made to the Restriction Requirement of September 25, 2003, and that this response was submitted on January 26, 2004 well within the statutory period. It is also respectfully requested that all petition fees be waived as the applicant is clearly not at fault for the abandonment of the application.

Should any additional facts be significant in this application, the Patent Office is requested to inform Applicant.

Favorable action is respectfully requested.

Respectfully submitted,

By: 

Theobald Dengler
Reg. No. 34,575
McGlew and Tuttle, P.C.
(914) 941-5600

70231.15

Encls. Photocopy of Transmission Verification Report
Photocopy of Certificate of Facsimile Transmission
Photocopy of Response of January 26, 2004



SCARBOROUGH STATION
SCARBOROUGH, NEW YORK 10510-0827
DATED: April 14, 2004

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS EXPRESS MAIL, ON TICKET NO. EV436440597US IN AN ENVELOPE ADDRESSED TO: COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450

McGLEW AND TUTTLE, P.C.

BY: Jordan Fonte DATED: April 14, 2004

APR 16 2004
DATE & TIME STAMP

TRANSMISSION VERIFICATION REPORT

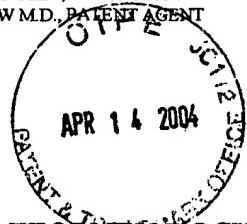
TIME : 01/26/2004 15:47
NAME : MCGLEW AND TUTTLE PC
FAX : 19149415855
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D.W. DARREN KANG JD, NJ BAR only

THEOBALD J. DENGLER, PATENT AGENT
HILDA S. McGLEW M.D., PATENT AGENT



McGLEW AND TUTTLE, P.C.

PATENT, TRADEMARK, COPYRIGHT, AND UNFAIR COMPETITION CAUSES

Counselors at Law

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FAXED
1.26.03

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CERTIFICATE OF FACSIMILE TRANSMISSION

I HEREBY CERTIFY THAT THIS PAPER FOR SERIAL NO. 09/895,917 (4 PAGES IN ALL) IS BEING FACSIMILE TRANSMITTED TO THE PATENT AND TRADEMARK OFFICE FACSIMILE NUMBER 1-703-308-7382 ON THE DATE SHOWN BELOW.

Jennifer M. Spinning
NAME OF PERSON SIGNING CERTIFICATION

J. Spinning
SIGNATURE

DATED: January 26, 2004
McGЛЕW AND TUTTLE, P.C.
SCARBOROUGH STATION
SCARBOROUGH, NEW YORK 10510-0827
TELEPHONE: (914) 941-5600
FACSIMILE: (914) 941-5855

NOTE: IF THERE IS ANY ADDITIONAL FEE DUE PLEASE CHARGE IT TO OUR DEPOSIT ACCOUNT 13-0410 AND ADVISE US OF ANY CHARGE THAT YOU MAKE



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RESPONSE TO REQUIREMENT UNDER 35 USC § 121

Applicant hereby elects Invention I with claims 1, 2 and 9 - 13 directed to this invention.

Applicant respectfully traverses the requirement. It is Applicant's position that the sub-combination is the subject matter of claim 1 and that the various combinations are not in the form of a combination sub-combination relationship but are instead various different combinations all with a common sub-combination, namely all with a common sub-combination of claim 1. Restriction is not proper.

Where Applicant presents an independent claim which is a sub-combination and further dependent claims are presented which add further limitations or features no restriction is proper. Claim 1 can be considered a linking claim. However, more properly claim 1 should be considered the basic sub-combination wherein for example claims 2 and 3 are combinations which share the same sub-combination. It is noted that the MPEP does not provide restriction

where there is a sub-combination (for example claim 1) and there are further combinations (for example claims 2 and 3) and wherein the combination claims share the features of the sub-combination.

Reconsideration of the requirement is requested. Favorable action on the merits is requested.

Respectfully submitted
for Applicant,

By:



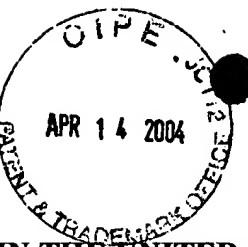
John James McGlew
Registration No. 31,903
McGLEW AND TUTTLE, P.C.

JJM:tf
70231.12

Enclosed: Petition for Three Month Extension of Time

DATED: January 26, 2004
SCARBOROUGH STATION
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SHOULD ANY OTHER FEE BE REQUIRED, THE PATENT AND TRADEMARK OFFICE IS HEREBY REQUESTED TO CHARGE SUCH FEE TO OUR DEPOSIT ACCOUNT 13-0410.



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PETITION UNDER 37 CFR 1.136 (a)

Sir:

The Office Action dated September 25, 2003 provided for a shortened statutory period for response of one month.

The shortened statutory period expired October 25, 2003.

Since the attached response is being filed within the third month pursuant to 37 CFR 1.136(a) the Examiner is respectfully requested to charge attorney's deposit account no. 13-0410 the appropriate petition fee of \$950.00 (fee code 1253).

Respectfully submitted
for Applicant(s),

By:



John James McGlew

Reg. No.: 31,903

For: McGLEW AND TUTTLE, P.C.

JJM:tf
70231.14

DATED: January 26, 2004
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